



POLICE / PROSECUTOR UPDATE



Issue No. 142

September 2003

This month we will take another look at investigatory or *Terry* stops because a recent court of appeals case contains a good discussion of the issue.

Late one evening two police officers were patrolling a specific area in an unmarked patrol car (the officers were in uniform). The patrol of the area was based on complaints of drug dealing at an apartment complex there. This area was known to the officers as a high-crime area, and one of the officers had previously made several arrests involving narcotics and handguns at the location.

While parked in the police car, the officers observed the defendant standing outside the apartment building and talking with an older man and a woman. After observing these people for several minutes, the officers drove by the building. The defendant ran inside the building, closed the door, and watched the officers from an upstairs window. Shortly thereafter the defendant came outside and continued to talk to the older man. The officers then walked toward the building. Again, the defendant looked at them and went back into the building. The officers talked to the older man for awhile when the defendant came out of the building and walked past the officers. One of them stopped the defendant and asked him why he had run when he saw them. He then instructed the defendant to remove his hands from his jacket pockets. The defendant complied but then put his hands back in his pockets. At this point, the officer decided to do a pat-down search for weapons for his safety. While patting down the defendant's pants, the officer felt a large bag. Based on the feel and packaging of the bag, it was "obvious" and immediately apparent to the officer that it was a bag of cocaine. He arrested the defendant. The bag was found to contain cocaine and marijuana.

The court of appeals said this was an illegal

stop and search. The well-known standard is that an officer may briefly stop a person for investigatory purposes if the officer has reasonable suspicion of criminal activity. Reasonable suspicion exists where the facts known to the officer and the reasonable inferences from those facts would cause an ordinarily prudent person to believe that criminal activity has or is about to occur.

Presence in a high-crime neighborhood alone does not constitute reasonable suspicion; however, it may be considered as a factor in the totality of the circumstances known to the officer. Also, avoiding the police or turning away from them is not enough by itself to constitute reasonable suspicion. On the other hand, nervous, evasive behavior is a pertinent factor in determining reasonable suspicion. Headlong flight - when it occurs - is the consummate act of evasion. It is not necessarily indicative of wrongdoing, but it is certainly suggestive of it.

In the case we are examining, the court of appeals recognized that the officers were watching the apartment building because of complaints about drug dealing and that the building was located in a high-crime area. It also did not "minimize" the fact that the defendant twice fled into the building after seeing the officers. However, the officers did not observe any sort of transaction or interaction among the defendant and the other two people standing with him other than talking. He was not carrying anything unusual nor was he doing anything else suspicious. The mere fact that he walked or ran from the police into the building was simply not enough to meet the State's burden of proof.

Case: *Bridgewater v. State*, ___ N.E.2d ___
(Ind. Ct. App. 08/20/03)